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## Justices split over wetlands protections

BY BILL LAMBRECHT

St. Louis Post-Dispatch

**WASHINGTON** - A divided Supreme Court stopped short of limiting federal protection of wetlands while ruling Monday that the government overstepped its authority in halting two developments in Michigan.

The court voted 5-4 to set aside lower court decisions favoring federal regulators in two Michigan cases in a much-anticipated ruling that could bring confusion to federal wetlands regulation but not fundamentally alter the government's approach.

The fractured decision was praised by business groups and property-rights advocates.

Environmental advocates breathed a sigh of relief that the first key land-use decision under new Chief Justice John Roberts came up one vote short of potentially opening up many sensitive lands to development.

For his part, Roberts wrote that he was disappointed that the court had not achieved clear agreement on the reach of the Clean Water Act and that "lower courts and regulated entities will now have to feel their way on a case-by-case basis."

At issue was whether federal clean-water regulations apply to wetlands that are not close to rivers and lakes.

The court was so divided that justices provided five separate opinions. In the main opinion, Justice Antonin Scalia wrote scathingly of an "immense expansion of federal regulation of land use" under the Clean Water Act that has occurred over the past five presidential administrations.

Federally regulated waters of the United States, Scalia continued, "include storm drains, roadside ditches, ripples of sand in the desert that may contain water once a year and lands that are covered by floodwaters every 100 years."

Scalia was joined by the three other conservative members of the court - Roberts and



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Justices Clarence Thomas and Samuel Alito Jr. Those dissenting were John Paul Stevens, Ruth Bader Ginsburg, Stephen G. Breyer and David Souter.

Justice Anthony M. Kennedy cast the key vote, concurring in the judgment that regulators had misinterpreted the Clean Water Act but writing a separate opinion disagreeing with both camps. He said that Scalia's opinion "needlessly jeopardizes the quality of our waters."

In central Michigan, John Rapanos faced a prison sentence and a multi-million dollar fine after spending \$350,000 to fill in 54 acres of wetlands to build a shopping center that he contended was 20 miles from the nearest navigable waters.

Likewise, the Army Corps of Engineers prevented June Carabell from erecting condominiums on 16 acres of woods near a ditch in the Detroit area that eventually connected to Lake St. Clair, about a mile away.

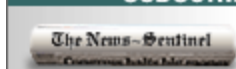
Reed Hopper, a Pacific Legal Foundation lawyer who represented Rapanos, praised the ruling even though he said it did not provide "a clear, bright-line rule of federal jurisdiction" in regulating wetlands.

Environmental Defense lawyer Tim Searchinger, who filed a friend-of-the-court brief in the case, said that increases the onus on the Army Corps of Engineers in determining what constitutes a wetland.

"What this ultimately means is that in virtually every case, the corps will need to provide persuasive proof. It's going to be a huge administrative challenge," he said.

*Gillian Gillers of the Post-Dispatch Washington bureau contributed to this report.*

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